

**Lancaster Community Hospital and Hospital & Service Employees Union, Local 399.** Case 31-CA-18658

June 12, 1991

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND DEVANEY

On March 6, 1991, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 31-RC-6496. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 14, 1991, the General Counsel filed a Motion for Summary Judgment. On May 17, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 31, 1991, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer and response to the Notice to Show Cause the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent is a California corporation with an office and principal place of business located in Lancaster, California, where it is engaged in the operation of an acute care hospital. The Respondent, in the course and conduct of its business operations, annually derives gross revenues in excess of \$250,000, and purchases and receives goods or services valued in excess of \$50,000 directly from suppliers located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

*A. The Certification*

Following the election held February 24, 1989, the Union was certified on January 4, 1991, as the collective-bargaining representative of the employees in the following appropriate unit:

**INCLUDED:** All full time and regular part time professional employees employed by Lancaster Community Hospital including all relief charge nurses and relief supervisors, registered nurses, interim permittee registered nurses, operating room registered nurses, laboratory technologists, I, II and III, pharmacists, respiratory care practitioners, social service registered nurses, social service discharge planners, diagnostic related group coordinators, infection control registered nurses, patient accountants, quality assurance coordinators, charge respiratory care practitioners, radiologic technologists, CT technologists, nuclear medicine technologists, ultra sound technologists, special procedures technologists, assistant supervisors, laboratory and all float pool employees employed in classifications included in the unit who have worked one shift per pay period during the thirteen week period preceding December 24, 1988, and all non-professional employees employed by Lancaster Community Hospital including all licensed vocational nurses I and III, unit secretaries, nursing technicians, nurse aids, operating room technicians, operating room assistants, central supply technicians, central supply aids, laboratory assistants, clerk typists, file clerks, advanced clerk typists, EKG technicians, EKG unit secretaries, secretaries, receptionists, pharmacy technicians, pharmacy messengers, pharmacy technicians bil-

lings, emergency room technicians, emergency room admitting licensed vocational nurses, food service workers, dishwashers and dishwashers II, cooks I and II, diet aids, diet technicians, buyers, stock clerks, assistant purchasing agents, housekeepers, engineers, assistant chief engineers, general maintenance workers, payroll clerks, marketing/community relations coordinators, electric/air engineers, cashiers, medicare log clerks, accounts payable clerks, cash supervisors, PBX/admitting clerks, PBX operators, admitting clerks, insurance billers, insurance secretaries, file clerks, outpatient billers, data entry operators, credit/collections clerks, credit supervisors, cashiers, insurance verifiers, licensed vocational nurses admitting III, central testing, outpatient payable clerks, medical records coders, medical records transcribers II and III, outpatient coders, medical staff coordinators and all float pool employees employed in classifications included in the unit who have worked one shift per pay period during the thirteen week period preceding December 24, 1988.

**EXCLUDED:** All confidential employees, guards, charge nurses and other supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

#### B. Refusal to Bargain

Since on or about February 4, 1991, the Union has requested the Respondent to bargain, and, since on or about February 7, 1991, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after February 7, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.<sup>1</sup>

<sup>1</sup> We will not, however, grant the General Counsel's request for an order requiring the Respondent to provide certain specified information to the Union. Although the duty to bargain includes a corresponding duty to provide nec-

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Lancaster Community Hospital, Lancaster, California, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with Hospital & Service Employees Union, Local 399 as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

**INCLUDED:** All full time and regular part time professional employees employed by Lancaster Community Hospital including all relief charge nurses and relief supervisors, registered nurses, interim permittee registered nurses, operating room registered nurses, laboratory technologists, I, II and III, pharmacists, respiratory care practitioners, social service registered nurses, social service discharge planners, diagnostic related group coordinators, infection control registered nurses, patient accountants, quality assurance coordinators, charge respiratory care practitioners, radiologic technologists, CT technologists, nuclear medicine technologists, ultra sound technologists, special procedures technologists, assistant supervisors, laboratory and all float pool employees employed in classifications included in the unit who have worked one shift per pay period during the thir-

essary and relevant information, the Board traditionally has not issued an order specifically requiring a respondent to provide such information absent an allegation that the respondent has actually refused to do so. Here, neither the charge nor the complaint contains an allegation that the Union requested or that the Respondent refused to provide necessary and relevant information to the Union. Nor does the Union's February 4, 1991 letter requesting bargaining contain a request for information. In these circumstances, we agree with the Respondent and find that it would be inappropriate on summary judgment to issue the order sought by the General Counsel.

teen week period preceding December 24, 1988, and all non-professional employees employed by Lancaster Community Hospital including all licensed vocational nurses I and III, unit secretaries, nursing technicians, nurse aids, operating room technicians, operating room assistants, central supply technicians, central supply aids, laboratory assistants, clerk typists, file clerks, advanced clerk typists, EKG technicians, EKG unit secretaries, secretaries, receptionists, pharmacy technicians, pharmacy messengers, pharmacy technicians billings, emergency room technicians, emergency room admitting licensed vocational nurses, food service workers, dishwashers and dishwashers II, cooks I and II, diet aids, diet technicians, buyers, stock clerks, assistant purchasing agents, housekeepers, engineers, assistant chief engineers, general maintenance workers, payroll clerks, marketing/community relations coordinators, electric/air engineers, cashiers, medicare log clerks, accounts payable clerks, cash supervisors, PBX/admitting clerks, PBX operators, admitting clerks, insurance billers, insurance secretaries, file clerks, outpatient billers, data entry operators, credit/collections clerks, credit supervisors, cashiers, insurance verifiers, licensed vocational nurses admitting III, central testing, outpatient payable clerks, medical records coders, medical records transcribers II and III, outpatient coders, medical staff coordinators and all float pool employees employed in classifications included in the unit who have worked one shift per pay period during the thirteen week period preceding December 24, 1988.

**EXCLUDED:** All confidential employees, guards, charge nurses and other supervisors as defined in the Act.

(b) Post at its facility in Lancaster, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Hospital & Service Employees Union, Local 399 as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

**INCLUDED:** All full time and regular part time professional employees employed by Lancaster Community Hospital including all relief charge nurses and relief supervisors, registered nurses, interim permittee registered nurses, operating room registered nurses, laboratory technologists, I, II and III, pharmacists, respiratory care practitioners, social service registered nurses, social service discharge planners, diagnostic related group coordinators, infection control registered nurses, patient accountants, quality assurance coordinators, charge respiratory care practitioners, radiologic technologists, CT technologists, nuclear medicine technologists, ultra sound technologists, special procedures technologists, assistant supervisors, laboratory and all float pool employees employed in classifications included in the unit who have worked one shift per pay period during the thirteen week period preceding December 24, 1988, and all non-professional employees employed by Lancaster Community Hospital including all licensed vocational nurses I and III, unit secretaries, nursing technicians, nurse aids, operating room technicians, operating room assistants, central supply technicians, central supply aids, laboratory assistants, clerk typists, file clerks, advanced clerk typists, EKG technicians, EKG unit secretaries, secretaries, receptionists, pharmacy technicians, pharmacy messengers, pharmacy technicians billings, emergency room technicians, emergency room admitting licensed vocational nurses, food service workers, dishwashers and dishwashers II, cooks I and II, diet aids, diet technicians, buyers, stock clerks, assistant purchasing agents, housekeepers, engineers, assistant chief engineers, general maintenance workers, payroll clerks,

marketing/community relations coordinators, electric/air engineers, cashiers, medicare log clerks, accounts payable clerks, cash supervisors, PBX/admitting clerks, PBX operators, admitting clerks, insurance billers, insurance secretaries, file clerks, outpatient billers, data entry operators, credit/collections clerks, credit supervisors, cashiers, insurance verifiers, licensed vocational nurses admitting III, central testing, outpatient payable clerks, medical records coders, medical records transcribers II and III, outpatient coders, medical

staff coordinators and all float pool employees employed in classifications included in the unit who have worked one shift per pay period during the thirteen week period preceding December 24, 1988.

*EXCLUDED:* All confidential employees, guards, charge nurses and other supervisors as defined in the Act.

LANCASTER COMMUNITY HOSPITAL